IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24/9/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.29480 OF 2003.

R.Elangovan ... Petitioner

-Vs-

1. Tamil Nadu Government,
represented by its Secretary,
Higher Education Department,
Fort St.George,
Chennai-9.

2. University of Madras,
represented by its Registrar,
Chepauk,
Chennai-5,

3. Regional Joint Director of
Collegiate Education,
Chennai Region,
807, Anna Salai,
Chennai-2.

4. A.M.Jain College,
rep.by its Secretary,
Meenambakkam,
Chennai-114. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : Mr.D.Hariparanthaman

^For R.2 : Mr.M.Maharaja

For R.1 & R.3 : Ms.Velumani, A.G.P.
For R.4 : Mr.S.P.Appadurai

:O R D E R

The above Writ Petition has been filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorarified Mandamus to

call for the records of the first respondent in letter No.3059/E2/2003-4, dated 25.9.2003 and the consequential order dated 13.10.2003 of the fourth respondent, quash the same an d to direct the respondents 1 and 3 to approve the petitioner's appointment as Lecturer in English in the fourth respondent College w.e.f. 13.7.2000 for the purpose of grant.

2. In the affidavit filed in support of the petition, the petitioner would submit that he passed M.A.(English) with 54.51% in the year 19 90 and also passed out M.Phil. in the year 1991; that thereafter he worked as a Lecturer in English at Pachaiappa's college (Evening Section) from 1991 to 1996; that he joined the New College on 15.7.1996 in the permanent vacancy as a Lecturer in English and worked upto 30.4 .2000 and joined the fourth respondent college on 13.7.2000 in the permanent vacancy as Lecturer in English; that Pachiappas (Evening Section) is run on self-financing basis while the New College and the fourth respondent are aided colleges getting cent per cent aid from the first respondent; that both the self-financing college and the aided colleges are private colleges under Section 2(8) of the Tamil Nadu Private Colleges Regulation Act (in short 'TNPCR Act'); that Pachiappa's College (Evening Section) and the New College as well as the fourth respondent are affiliated to the second respondent University; that as per Section 15 of the TNPCR Act, the second respondent is the competent authority to prescribe and approve the qualification of teachers appointed in the Private colleges affiliated to them and hence the New College sought approval for his qualification to hold the post of Lecturer and the second respondent in their order dated 2.11.1998 approved his qualification to hold the post of Lecturer w.e.f. 15.7.19 96 in the New College and while approving his qualification, the second respondent rounded of his marks in M.A. (English) from 54.51% to 5 5% for the purpose of higher education and for appointment as Lecturer in the affiliated colleges.

3. The petitioner would further submit that after he joined the fourth respondent on 13.7.2000, the fourth respondent sought approval from the second respondent for his appointment relating to his qualification and the second respondent refused to approve his qualification in their letter dated 12.12.2000 addressed to the fourth respondent without noticing and taking into account the earlier approval granted by them in their letter dated 2.11.1998 and he made an appeal to the second respondent through the fourth respondent about the earlier order dated 2.11.1998 of the second respondent granting approval for his appointment in the New College and the same was favourably considered by the second respondent and the Syndicate of the second respondent in their resolution dated 9.3.2001 resolved to approve his appointment relating to qualification in the background of earlier approval granted by them; that it was also decided by the second respondent as a matter of policy that in respect of candidates whose qualifications were approved and got lapsed due to break in service, the earlier approval would continue, if the break does not exceed one year and in view of the said resolution of the Syndicate of the second respondent dated 9.3.2001 taking a general decision as stated above, the earlier approval granted by them continues to be valid and no fresh approval is necessary and in his case, there is actually no break and the break period 1.5.2000 to 12.7.2000 is the vacation period.

4. The petitioner would further submit that the second respondent communicated their decision dated 9.3.2001 in the letter dated 31.3.200 1 to the fourth respondent and the fourth respondent forwarded necessary proposal for approval of his appointment for the purpose of grant to the third respondent, enclosing the order dated 31.3.2001 of the second respondent, but the third respondent, after one year has passed the order dated 11.3.2002 refusing to approve his appointment on ground that he is not eligible to hold the post of Lecturer since he is not possessing the minimum mark of 55%; that thereafter, the fourth respondent brought to the notice of the third respondent that since the second respondent has already approved his qualification to hold the post of Lecturer in English, the third respondent should reconsider his decision dated 11.3.2002 and thereafter the third respondent addressed a letter dated 14.2.2003 to the second respondent seeking clarification, who in turn replied that the petitioner is eligible to hold the post of lecturer as per the decision of the Syndicate dated 9.3.2001, but the third respondent thereafter referred the matter to the first respondent through the Director of Collegiate Education; that the petitioner has also submitted a representation dated 18.12.2002 to the first respondent stating that he is having the qualification to hold the post of Lecturer in view of the decision of the second respondent under Section 15 of the TNPCR Act but the first respondent has now passed the impugned order dated 25.9.2003 holding that he is not eligible to hold the Post of Lecturer in view of the University Grants Commission (Minimum qualifications required for the appointment and career advancement of Teachers in University and Institutions affiliated to it) Regulations, 2000 (shortly UGC Regulations, 2000) framed by the UGC under the University Grants Commissions Act, 1956 and consequent to the order passed by the first respondent, the fourth respondent has also passed the order dated 13.10.2003 thereby withdrawing the provisional appointment order dated 5.7.2000. Hence, the W.P.

5. In the counter filed by the first respondent, besides narrating the chain of events leading to the rejection of the approval of the petitioner's appointment, it would also be submitted that the qualification for the post of Lecturer prescribed by the University Grants Commission is as follows:

"The minimum requirements of a good academic record, 55% of the marks at the Masters Level and qualifying in the National Eligibility Test (NET) or an accredited test, shall remain for the appointment of lecturers. Government/University may exempt Ph.D. holders from NET or to require NET, in their case, either as a desirable or essential qualification for appointment as Lecturers in Colleges. The minimum requirement of 55% marks need not be insisted upon for the existing incumbents who are already in the colleges. However, these marks should be insisted upon for the new entrants"

6. The first respondent would further submit that the petitioner possesses only 54.51% of marks in his P.G. Decree and he has been appointed to the post of English Lecturer on 13.7.2000 and the University of Madras has approved his qualification to hold the post of Lecturer in its letter No.A.III/Qln.ogl/1/2001/833, dated 31.3.2001, but, however, the University

Grants Commission Regulation, 2000 states that it has dropped the provision in the Regulation, 1991 stating "provided that any relaxation in the prescribed qualifications or any of the institutions including constituent or affiliated colleges recognised under clause (f) of Section 2 of the aforesaid Act or by an institution deemed to be a University under Section 3 of the said Act with the prior approval of the University Grants Commission and it is replaced as "provided that any relaxation in the prescribed qualifications can only be made by the University Grants Commission in a particular subject in which NET is not being conducted or enough number of candidates are not available with NET qualifications for a specified period only".

7. The first respondent would further submit that according to Section 52 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, it shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force including any regulation or statute of any University; that the power conferred on any University under Section 15 of the said Act to make regulations, statutes or ordinance specifying the qualifications required for the appointment of teachers does not mean that they can make regulations or specify qualifications overriding the central Act viz. The University Grants Commission Act, 1956 enacted under Entry 66 List-I Union List in the VII Schedule to the Constitution an d hence any regulation made by the University regarding the qualifications for the appointments of the teachers should be in conformity with the University Grants Commission Act, 1956 and the regulations made thereunder by the University Grants Commission; that sub-section (1) of Section 16 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 provides that no person who does not possess the qualification specified under Section 15 shall, on or after the commencement of the said Act, be appointed as Teacher in any private college and there is no provision in the said Act empowering the Government to relax the provision contained in the said Section 16(1) and therefore the resolution passed by the Syndicate dated 9.3.2001 by the Madras University is void since as per Regulation 1(ii) of the UGC Regulations, the said Regulations shall apply to every University established by or under among other things, a State Act, every institution including a constituent or an affiliated college recognised by the Commission. On such grounds, the first respondent would pray to dismiss the above writ petition.

8. The second respondent would file a counter thereby supporting the version of the petitioner and submitting that in respect of colleges which are affiliated to the University of Madras, approval of qualifications for the appointment to the posts of Principals/Lecturers are accorded by the University as per the rules of qualifications prescribed by the Syndicate/AC/Senate from time to time and other rules and regulations governing the said subject; that in fact, the Syndicate in its meeting held on 19.11.1993, resolved that 54.5% of marks and above obtained by candidates in the PG Degree Examination be rounded off to the nearest integer i.e. 55% of marks for pursuing higher studies like M.Phil., Ph.D etc., and also for the purpose of appointment in the affiliated colleges and departments of the University of Madras, which was also communicated to all concerned; that the petitioner had scored 54.5% marks in M.A. (English) and while he was working as Lecturer in English in New College, the qualification approval in terms of

the above resolution of the Syndicate was communicated in letter No.A.III/2/98/2446, dated 2.11.1998; that the said qualification approval granted on the basis of the said resolution was withdrawn w.e.f. 26.9.1997 pursuant to representations received from the Chairman, Teachers Recruitment Board and hence the University was not in a position to accord qualifications approval for the writ petitioner to enable him to hold the post of lecturer in the 4th respondent College w.e.f. 13.7.2000; that the representation of the petitioner was considered by the Syndicate in its meeting on 9.3.2001 and the eligibility of appointment of the petitioner, working as English Lecturer in the fourth respondent College w.e.f. 13.7.2000 in a permanent vacancy in the light of earlier approval of qualification, which lapsed due to break inservice was considered and as a general policy of the University, the Syndicate resolved that in similar cases of candidates whose qualifications were earlier approved and got lapsed due to break in service and such facility be extended to cases where the period of break in service does not exceed one year and further the petitioner has been employed since 1991 in some capacity or other as Lecturer in English and the approval accorded to the petitioner in respect of his qualification is in accordance with the decision taken by the Syndicate of the University and there is no ambiguity in the action of the University. On such averments, the second respondent would pray to pass necessary orders in the writ petition.

9. During arguments, the learned counsel for the petitioner, besides reiterating the facts pleaded in the affidavit filed in support of the above writ petition, would also submit that the second respondent, being the competent authority under Section 15 of the TNPCR Act to decide about the qualification of teachers to hold the post, their decision is final and no authority including the first respondent can interfere in that decision in view of Section 52 of the TNPCR Act giving overriding effect to any other law; that the said statutory right given under Section 15 of the TNPCR Act to the second respondent cannot be taken away even by UGC in view of the overriding effect given to the provision of the TNPCR Act by Section 52 of the Act; that the Secretary to the Government of Tamil Nadu, Higher Education as well as the Director of Collegiate Education are parties to the resolution dated 9.3.2001 of the Syndicate of the second respondent as they are ex-officio members of the Syndicate; that the petitioner was in continuous service in the University system right from 1991 and his appointment was approved by the University in their earlier order dated 2.11 .1998 w.e.f. 15.7.1996; that the UGC Regulations, 2000 do not visualise a situation where the marks of a candidate is above 54% and below 55% and therefore the decision of the second respondent to round of 54.51% as 55% is not contrary to the UGC Regulations, 2000 and in fact there is no conflict between the UGC Regulations and the decision of the second respondent in their meeting held in the Syndicate rounding of 54.51% as 55%.

10. The learned counsel would further submit that the percentage equivalent to grade point under seven point scale as stated by UGC Regulations, 2000 supports the case of the petitioner and therefore his marks should be taken as 55% and he is eligible for appointment; that the marks being 54.51% they do not come under 'C' grade as it is above 54% and as such, it should logically fit into 'B' grade making the petitioner eligible for

appointment.

11. The learned counsel for the petitioner would also cite an unreported decision of this Court made in W.P.No.10922 of 2000, dated 6.11 .2000 wherein a learned single Judge of this Court has held:

"... The Universities can regulate or frame rules under Section 15 of the Tamil Nadu Private Colleges (Regulation) Act. When the said Act specifically gives power only to the University to contemplate the qualifications, the University can make regulations to implement the scheme and the Government cannot by issuing an administrative order usurp the power of the University to whom the legislature has given power to specify qualifications for appointment of Teachers."

12. The learned counsel for the petitioner would also cite another judgment of this Court delivered in S.MOHAMOOD BASHA vs. DIRECTOR OF COLLEGIATE EDUCATION, MADRAS AND OTHERS reported in 2002(3) L.L.N.1196 wherein a learned single Judge of this Court, following the earlier decision of this Court in SALIAR MAHAJANA HIGHER SECONDARY SCHOOL vs. JOINT DIRECTOR OF SCHOOLS reported in 1995 Writ L.R. 277 has held:

"... so far as the aided schools are concerned, the rules cannot be treated as statutory rules framed under ARt.309 of the Constitution as the very Article is inapplicable to private Schools. Rule 12A of the Tamil Nadu State and Subordinate Service Rules, therefore, cannot be regarded as statutory rule so far as the employees of the aided college are concerned. Moreover, the Government does not have the power under the Act to prescribe the qualification for the post. The Act specifically reserves that power to the University and it is the University which has to decide the qualification required to be possessed by the person appointed to the post in the aided colleges...."

13. The learned counsel for the petitioner would also cite a judgment of the Honourable Apex Court delivered in RAMESHWAR DASS MEHLA vs. OM PRAKASH SAINI AND OTHERS reported in 2002(6) Supreme 545 wherein it has been held:

"When the appellant has secured 54.85 marks in the Master's degree and the selection committee is trying to find out as to who would be a suitable candidate and whether he possesses the necessary qualification with reference to the appointment to be made, they found the marks obtained by him is as good as 55 per cent. We do not think the view taken by the selection committee can be the subject matter of the judicial review as was held by this Court in Govind Rao's case (1964(4) SCR 575). In academic matters, particularly pertaining to qualifications, the view taken by the experts would be final. If this approach had been adopted by the High Court, the High Court could not have interfered with the action taken by the University in this case at all."

14. Citing the above judgments, the learned counsel for the petitioner would pray to grant the relief prayed for in the writ petition.

15. On the contrary, the learned counsel appearing for the second respondent and the learned Additional Government Pleader appearing on behalf of the first and third respondents, would re-iterate the points raised in their respective counter affidavits the essence of which have been extracted supra and tracing the same would only be a time consuming affair and unnecessary exercise and therefore it is only prudent to decide the above writ petition on the materials already recorded herebefore.

16. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and all the respondents as well, this Court is able to find that the above Writ Petition is one filed by the petitioner praying for the issue of a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the letter No.3059/E2/2003-4, dated 25.9.2003 and the consequential order dated 13.10.2003 passed by the fourth respondent and quash the same and direct the respondents 1 and 3 to approve the petitioner's appointment as Lecturer in English in the fourth respondent College w.e.f. 13.7.2000 for the purpose of grant.

17. The case of the petitioner is that he was appointed as Lecturer in English in the 4th respondent College w.e.f. 13.7.2000; that his educational qualification is M.A. English with 54.51% of marks in 1990 and also passed out M.Phil. in the subsequent year; that having worked as a Lecturer in two other Colleges, he joined 4th respondent College in the permanent vacancy as Lecturer in English; that it is an Aided College getting cent per cent aid from the first respondent Government falling under Section 2(8) of the TNPCR Act; that it is affiliated to the second respondent University which is the competent authority to prescribe and approve the qualification of Teachers appointed in Private Colleges and while the petitioner was working as a Lecturer in New College, it sought approval for his qualification to hold the post of Lecturer and the second respondent in their order dated 2.1 1.1998 approved his qualification rounding of his marks in M.A. (English) from 54.51% to 55% for the purpose of higher education and for appointment as Lecturer in the affiliated Colleges.

18. The further case of the petitioner is that after joining the 4 th respondent, it sought approval from the second respondent, which was refused and on appeal by the petitioner, the Syndicate of the second respondent by its resolution dated 9.3.2001 took a general decision that the earlier approval granted by them continue to be valid and no fresh approval is necessary in respect of those candidates even in the event of break of service, provided the same does not exceed one year; that the second respondent communicated the decision dated 9.3.2 001 along with a letter dated 31.3.2001 to the fourth respondent who in turn forwarded the proposal for approval to the third respondent and the third respondent as per its order dated 11.3.2002 refused to approve the appointment of the petitioner on ground that he is not eligible to hold the post of Lecturer since he is not possessed of the minimum marks of 55%; that when the fourth respondent sought clarification, the third respondent referred the matter to the first respondent and the first respondent, by the impugned order dated 25.9.2003 held that the petitioner is not eligible to hold the post of Lecturer in view of the University Grants

Commission Regulations, 2000 under the University Grants Commission Act, 1956 consequent to which the fourth respondent also passed its order dated 13.10.2003 thereby withdrawing the petitioner's provisional appointment order dated 5.7.2000 and hence the writ petition.

19. The strong defence put up on the part of the first respondent is that the qualification for the post of Lecturer as prescribed by UGC is a minimum of 55% of the marks at the Master's level with a good academic record and qualifying in the National Eligibility Test or an accredited test and even though the minimum required 55% marks need not be insisted upon for the existing incumbents who are already in the Colleges at the time that the UGC prescribed the qualifications and not to the new entrants and if at all there is an exemption, it is only for Ph.D. holders from NET and any other relaxation to the prescribed qualification could be made only by the UGC in a particular subject in which NET is not being conducted and for want of enough candidates.

20. The second respondent, sailing along with the case of the petitioner, would submit that it has been resolved that 54.5% of marks and above obtained by the candidates in the P.G. degree examination be rounded of to the nearest integer i.e. 55% marks for the purpose of appointment in the affiliated colleges; that even though the resolution had been withdrawn in the middle, on representation by the petitioner, the Syndicate in its meeting dated 9.3.2001 resolved renewing the earlier approval and since there is no ambiguity in the action of the University, it would approve the case of the petitioner for the approval.

21. During arguments, the learned counsel for the petitioner, among others, would submit that the second respondent being the competent authority under Section 15 of the TNPCR Act to decide such matters, its decision is final and no authority including the first respondent can interfere with the same in view of Section 52 of the TNPCR Act giving overriding effect to any other law and the same cannot be taken away even by the UGC; that the decision of the second respondent to round of 54.51% marks to 55% is not contrary to the UGC Regulations and that there is no conflict between the decision of the second respondent and the UGC Regulations regarding the same. The learned counsel would conclude that the UGC Regulations, 2000 supports the case of the petitioner and therefore the marks obtained by the petitioner should be taken as 55% and is eligible for appointment.

22. The learned counsel for the petitioner would cite an unreported decision of a learned single Judge of this Court passed in W.P.No.109 22 of 2000, dated 6.11.2000 besides citing two more judgments reported in 2002(3) L.L.N. 1196 and 2002(6) Supreme 545.

23. In the first judgment cited above, it has been held that Section 15 of the TNPCR Act gives power only to the University to make Regulations and the Government cannot, by issuing an administrative order, usurp the power of the University. In the second judgment cited above, a learned single Judge of this Court, dealing with Rule 12-A of the Tamil Nadu State and Subordinate

Service Rules and following the earlier decision of this Court reported in 1995 Writ L.R.277, has held that 'it cannot be regarded as a Statutory Rule for the employees of the Aided College and that the Government does not have the power under the Act to prescribe the qualification for the post since the said Power is reserved to the University by the Act which has to decide the qualifications required to be possessed by the employees in the Aided Colleges'.

24. In the last judgment cited above, dealing with the similar situation, the Honourable Apex Court has remarked that it does not 'think the view taken by the Selection Committee can be the subject matter of the judicial review' and that 'in academic matters, particularly pertaining to qualifications, the view taken by the experts would be final'.

25. Neither the issue in the case in hand pertains to administrative order so as to say that the same usurps the power of the University as it is the case in the first judgment cited above nor is it concerned with the Tamil Nadu State and Subordinate Rules so as to say that the Government does not have the power under the Act to prescribe the qualifications for the Post wherein the Act reserves the power to the University as it has been decided in the second case cited above nor even for a decision as to who would be the suitable body in the matter of deciding the qualification as it is held as the experts and the same cannot be a subject matter of the judicial review, as it has been decided in the third judgment cited above and hence needless to mention that the facts and circumstances of the case in hand are entirely different from that of those cases cited supra and hence different parameters have to be adopted in arriving at a valid decision so far as the case in hand is concerned.

26. The strong case put up on the part of the first respondent is that these provisions of the TNPCR Act, 1976 which paves the way for the University to pass resolutions cannot have any overriding effect on the Central Act viz. UGC Act, 1956 enacted under Entry 66 List-I Union List in the VII Schedule to the Constitution of India; that the Regulations made by the University regarding qualifications for the appointment of the teachers should be in conformity with the University Grants commission Act, 1956 and the Regulations made thereunder by the UGC; that Section 16(1) of the TNPCR Act, 1976 provides that no person who does not possess the qualification specified under Section 15 shall, after the commencement of the said Act, be appointed as Teacher in any private College and there is no provision in the said Act empowering the Government to relax the provisions contained in the said Section and therefore the resolution passed by the Syndicate dated 9.3.2001 by the second respondent is void, since, as per Regulation 1(ii) of the UGC Regulations, they shall apply to every University established by or under a State Act including a constituent or an affiliated college recognised by the Commission.

27. It is pertinent to note that the University Grants Commission Act, 1956 is a Central Legislation and as aforeseen, even the State Legislation i.e. the TNPCR Act, 1976, particularly since Section 16(1) provides that 'no person who does not possess the qualification specified under Section 15 shall, on or after the commencement of the said Act, be appointed as a Teacher in any private college' and there is no provision in

the said Act empowering the Government to relax the provision contained in this Section, therefore, the resolution passed by the Syndicate of the second

respondent dated 9.3.2001 is bereft of any authority or force of law much less as against the statutory provisions of the Central and State Acts mentioned supra.

28. Even in such event that the petitioner goes upto the extent of putting up an argument to the effect that even the first respondent Government falls under Section 2(8) of the TNPCR Act and that the institution is affiliated to the second respondent University which is a competent authority to prescribe and approve the qualification of Teachers appointed in Private Colleges and since approval was sought by the College where the petitioner was working, the approval granted by the second respondent rounding of his marks from 54.51% to 55% cannot be said to be an act in consonance with the parameters fixed by the central legislation i.e. the UGC Act, 1956 enacted by the Parliament and the Regulations made thereunder and unless such of the acts perpetrated on the part of the second respondent is approved by this Central Legislation, no amount of shelter could be taken in any fashion under the State Legislation particularly the TNPCR Act since by virtue of the UGC Act, the field is already occupied by the Central Legislation as against which the TNPCR Act cannot be put up nor could any provision of the State Legislation be in conflict with any of the provisions of the Central Legislation which, within the meaning of Article 254 of the Constitution of India would become void.

29. Therefore, unless the petitioner is able to show that the Central Legislation covering the subject i.e. the UGC Act, 1956 paves way for any relaxation of the marks, he cannot take shelter under any of the laws much less a State Legislation such as the TNPCR Act which is not only a piece of legislation that came into existence subsequent to the Central Legislation but also cannot have the overriding effect on the central legislation particularly since the field is occupied by the central legislation and therefore as against the UGC Act fixing the marks for the educational qualification for appointment of the Lecturer at 55%, the relaxation of the marks and approval granted by the second respondent is only bereft of any valid or legal authority or sanction and hence the first respondent, in the impugned order is justified in refusing to grant approval to the resolution of the University and the request of the individual to approve his appointment since he possessed marks less than 55% in PG Degree as prescribed by the UGC for appointment as Lecturer. Therefore, the above writ petition filed by the petitioner should only fail and hence the following order:
In result, the above writ petition fails and the same is dismissed.
No costs.

Index: Yes

Internet: Yes

Rao

To

1. The Secretary to the
Government of Tamil Nadu,
Higher Education Department,
Fort St.George,
Chennai-9.

2. The Registrar,
University of Madras,
Chennai-5,

3. Regional Joint Director of
Collegiate Education,
Chennai Region,
807, Anna Salai,
Chennai-2.